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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,939	02/09/2004	Haim Emil Dahan	09420.0001-00000	8623
22852 7590 08/02/2010 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
			EXAMINER SCHELL, LAURA C	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/774,939

Applicant(s)

DAHAN ET AL.

Examiner

LAURA C. SCHELL

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5, 8, 12-15, 19, 20, 23 and 27-30 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 6, 7, 9-11, 16-18, 21, 22 and 24-26 is/are allowed.
- 6) ☒ Claim(s) 31 and 34-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 5/17/2010, 6/21/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 31 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smaczny (US Patent No. 3,260,462). Smaczny discloses the method substantially as claimed including a method for indicating suction comprising: receiving suction from a mouth (the straws in Figs. 2, 3, 5 and 6 all would receive suction from a mouth at proximal end of the straw a/d); providing the suction to at least a first pathway and a second pathway having a different volume from the first pathway (in Fig. 2, for example, suction is applied by the user's mouth at a2, and this thus applies suction to the first pathway (b2) as well as the second pathway (c2). The volume of the two pathways (b2 and c2) are clearly different); the suction drawing fluid from a fluid source into the first

pathway and the second pathway (suction applied at a2 will draw fluid from the fluid source (whatever fluid the straw is placed in) into both pathways and then into the user's mouth), wherein the first and second pathways are in direct fluid communication with the baby's mouth (one could interpret the first pathway as being the combination of b2 and a2, and the second pathway as being the combination of c2 and a2. These would both still have different volumes and they would both be in direct fluid communication with the user's mouth. Please note that Applicant has not claimed that the pathways must have separate inlets and outlets); and indicating the presence of fluid drawn into and retained in the second pathway (the appearance of fluid in the second pathway c2/a2 can be interpreted as the indicator of the presence of fluid. Since this pathway clearly has a substantial length to it, fluid is clearly retained within this pathway. Please note that Applicant is currently not claiming any specifics of how the fluid presence is indicated or how long the fluid is retained for), wherein the presence of fluid drawn into and retained in the second pathway indicates the presence of suction to the first pathway (if fluid is drawn into the second pathway by suction, that suction is also drawing fluid into the first pathway and therefore the presence of fluid in the second pathway indicates that suction is also being applied to the first pathway). Smaczny, however, does not disclose that this device is specifically used by a baby. However, it would be obvious to one of ordinary skill in the art at the time of the invention that the device is perfectly capable of being used by a baby, as a baby nurses from bottles and is therefore also capable of suctioning from a similar structures such as the disclosed straw.

In reference to claim 36, Smaczny discloses that the amount of fluid drawn into and retained in the second pathway is indicative of the amount of fluid drawn into the first pathway (Figs. 2, 3, 5 and 6).

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smaczny (US Patent No. 3,260,462) in view of Wilk (US Patent No. 5,222,940). Smaczny discloses the device substantially as claimed except for gradations along the second pathway. Wilk, however, discloses a similar device (Figs. 1 and 2) which includes gradations along a second pathway (gradations 18 along the pathway leading to mouth portion 26). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Smaczny's device by providing gradations along the second pathway, as taught by Wilk, as this would allow the user or an observer to keep track and measure how much fluid is being consumed by the user.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smaczny (US Patent No. 3,260,462) in view of Bommarito et al. (US Patent No. 6,741,523). Smaczny discloses the device substantially as claimed except for a color code in the fluid pathway to indicate presence of fluid. Bommarito, however, discloses color codes for fluid pathways to indicate the presence of fluid in the pathways (col. 27, lines 32-35). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Smaczny with the color-coded fluid presence

indicator, as taught by Bommarito, in order to provide a device with multiple indicators that are easily read and understood by the average individual.

Allowable Subject Matter

Claims 1-3, 6, 7, 9-11, 16-18, 21, 22, 24-26 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: The subject matter of the independent claims could either not be found or was not suggested in the prior art of record. The subject matter not found in independent claim 1 was a method of measuring fluid flow from a fluid source to a baby's mouth including a feeding pathway with first and second openings, an indicator pathway having a different volume than the feeding pathway and having first and second openings, and measuring the amount of fluid drawn into and retained in the indicator pathway, wherein the amount of fluid drawn into and retained in the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway.

The subject matter not found in independent claim 16 was a device having a feeding pathway with first and second openings, an indicator pathway with a different volume than the feeding pathway and also having first and second openings, and wherein the amount of fluid drawn into and retained in the indicator pathway is indicative of the amount of fluid drawn into the feeding pathway.

Response to Arguments

Applicant's arguments, see pages 12-18 of Applicant's arguments, filed 5/17/2010, with respect to the rejection(s) of claim(s) 1-3, 6, 7, 9-11, 16-18, 21, 22, 24-26 under Woolridge have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Smaczny for claims 31 and 34-36. While a new primary reference is being used for claims 31 and 34-36, the examiner has maintained Bommarito as a secondary reference as it teaches that it is known in the art to have color coding along a passageway to indicate the presence of fluid, and thus it is the examiner's position that the teaching of Bommarito would have been obvious to combine with the primary reference, as presented in the rejection above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA C. SCHELL whose telephone number is (571)272-7881. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Schell/
Examiner, Art Unit 3767
/KEVIN C. SIRMONS/

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Supervisory Patent Examiner, Art Unit 3767